

STATE OF INDIANA, COUNTY OF NOBLE, SS:

IN THE NOBLE SUPERIOR COURT, 2016 TERM

CAUSE NO. 57D01-0906-FD-122

STATE OF INDIANA     )  
                              )  
v.                         )  
                              )  
JEFFREY S. BROWN     )

**FILED**

MAR 08 2016

*Micaela Mawhert*  
CLERK NOBLE SUPERIOR COURT  
DIVISION 1

**MOTION TO VACATE CONVICTION AND FOR DISMISSAL**

COMES NOW the Defendant, Jeffrey S. Brown, by counsel, James J. Abbs and moves this Court to set aside the conviction of the Defendant and to dismiss the case against the Defendant with prejudice on the grounds that:

- (1) Defendant was convicted of criminal confinement as a Class B Felony and Sexual Battery as a Class D Felony in Kosciusko County in Cause No. 43D01-9608-CF-227.
- (2) Upon the Defendant's release from the Department of Corrections on February 19, 2009, the Defendant was informed and instructed by the Department of Corrections that he needed to register as an Indiana Sex Offender pursuant to the Indiana Code.
- (3) That on February 20, 2009 pursuant to the direction of the Indiana Department of Corrections, Defendant registered as a Sex Offender in Noble County, Indiana.
- (4) That on June 16, 2009 in Cause No. 57D01-0906-FD-122, an Information was filed charging the Defendant with 3 counts of Failure to Register with the Sex Offender Registry as Class D Felonies.
- (5) That on October 11, 2011, the Defendant plead guilty to Count III, Failure to Register with the Sex Offender Registry as a Class D Felony.

**EXHIBIT**

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(6) That on September 1, 2015, an Information was filed in Cause No. 57C01-1509-F5-67 charging the Defendant with four (4) counts of Failing to Register as a Sex or Violent Offender.

(7) That on January 14, 2016 the Defendant plead guilty to Count 1 and Count 2 for Failure to Register as a Sex or Violent Offender.

(8) That after a review of the applicable law and facts in the case, it has been determined that the Defendant was not required to register as a Sex Offender as he had been directed to do so by the Indiana Department of Corrections since the offenses to which he had been convicted of in 1996 in Kosciusko County were not offenses which required him to file with Sex Offender Registry.

(9) That although the law has now been amended, application of the new Sex Offender Registry requirement violates the prohibition contained in the United States Constitution and Indiana Constitution against ex po facto law where the Defendant, at the time he committed his offense was not required to register as a Sex Offender.

(10) Based upon the foregoing, there was neither a factual nor legal basis for the Plea entered by the Defendant in both the Superior Court 1 and Circuit Court causes and as such said guilty plea and convictions should be set aside.

(11) Based upon the foregoing, the charges brought against the Defendant in Superior Court 1 and the Circuit Court should be dismissed since there is no factual or legal basis supporting the charges.


WHEREFORE, Defendant by counsel respectfully requests that the Court set aside the conviction of the Defendant, that these matters be dismissed with prejudice and further,

that a copy of said Order be sent to the Department of Corrections informing them that the Defendant is not required to register as a Sex Offender and for other relief in the premises.

Dated this 8 day of March, 2016.

Respectfully submitted,

NOBLE COUNTY PUBLIC DEFENDER'S AGENCY


  
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James J. Abbs  
Attorney I.D. #16310-57  
101 N. Orange St., Courthouse  
Albion, IN 46701  
(260) 636-6688

**STATE'S RESPONSE TO DEFENDANT'S MOTION**

COMES NOW the State of Indiana by Kelly Morris, Chief Deputy Prosecuting Attorney and informs the Court that after reviewing Defendant's Motion and researching the applicable law, that the State of Indiana will not be opposing said Motion.

Dated this 9 day of March, 2016.

Respectfully Submitted,

  
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Kelly Morris, Chief Deputy Prosecuting Attorney